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### Summary of Lehrer McGovern Bovis v. Bullock Insulation, 124 Nev. Adv Op. No. 92

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*Nevada Law Journal*

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*Lehrer McGovern Bovis v. Bullock Insulation*, 124 Nev. Adv Op. No. 92<sup>1</sup>  
Oct. 30, 2008

**PROCEDURAL LAW - INCONSISTENT JURY VERDICTS**

**Summary**

Rewritten decision for prior June 2008 decision on a petition for rehearing in a case where the Nevada Supreme Court reversed and remanded a judgment of breach of contract against Lehrer McGovern Bovis, Inc. (“Bovis”), affirmed a judgment enforcing a lien against Bovis, vacated an award of attorney fees to Bullock Insulation, Inc. (“Bullock”), and reversed sanctions against Bovis.

**Disposition/Outcome**

Denied petition for rehearing. Rewrote previous opinion to clarify rationale for coming to decision so as to explain the misperception that the court was overruling precedent.

**Factual and Procedural History**

Bovis had a contract to manage the construction of the Venetian Casino Resort and Hotel (“the Venetian”). Bovis subcontracted with Bullock to do certain firestopping work on the Venetian. Bullock completed firestopping work only on certain floors of the Venetian while leaving others with no firestopping. The parties had a misunderstanding about which floors were to have firestopping work done.

An inspector came and ordered that all of the floors be firestopped. Bullock then did the firestopping work on the remainder of the floors. This required a retrofit because the building on the other floors had already been substantially completed. the retrofit resulted in additional, unexpected costs to both Bovis and Bullock.

As a result of the extra costs, Bullock sought to collect extra pay from Bovis. Bovis refused to pay so Bullock put a mechanics lien on Bovis and sued Bovis and the Venetian for breach of contract. However, in the contract Bullock had expressly waived its right to put a mechanics lien on Bovis, so Bovis countersued Bullock for breach of contract.

The district court found Bovis and the Venetian liable of breach of contract and did not find Bullock liable for breach of contract. The court determined that the lien waiver provision of the contract was invalid as a matter of public policy. The court also sanctioned Bovis for unethical legal practice and ordered Bovis to pay Bullock’s attorney fees.

Bovis and the Venetian appealed. The Nevada Supreme Court made a judgment, after which both Bovis and Bullock filed petitions for rehearing.

**Discussion**

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<sup>1</sup> By Stephen O. Schofield

## Inconsistent Jury Verdicts

The district court submitted special interrogatories to the jury. Among the questions the court asked the jury were 1) whether the contract required Bullock to do the firestopping work on all of the floors; 2) whether at any time Bovis had waived this requirement; 3) whether Bovis had to pay Bullock for the extra cost Bullock incurred by having to do the firestopping after retrofitting; and 4) whether Bovis could recover from Bullock for the extra costs incurred from having to do the retrofitting due to Bullock's failure to do the firestopping in the first place.

The jury returned inconsistent responses. The jury said that the contract required Bullock to firestop all floors prior to the completion of the construction of the floors (so as to avoid the expense of retrofitting). However, the jury still determined that Bovis could not recover retrofitting costs, and that Bovis must pay Bullock for the extra costs that Bullock incurred from completing firestopping on all floors.

The district court did not find these responses inconsistent, but the Supreme Court did. Consequently the Supreme Court reversed and remanded the breach of contract finding because under statute<sup>2</sup>, the district court judge should not have made a judgment until the inconsistency had been resolved. The district court judge abused discretion by not complying with the statute.

## Lien Waiver Provisions

The Supreme Court affirmed the district court's judgment that the lien waiver provision in the contract was invalid as a matter of public policy. Contractors put up large amounts of money to fund projects. If contractors have a difficult time getting paid, their whole business can go under because of the heavy up front costs of a project. To ensure that contractors are able to get paid, contractors have the right to put mechanics liens on the entities that owe them money for work done. It is against the public's best interest to permit parties to waive this right, therefore the waiver is invalid, and the lien remains.

## Pay-if-paid Provisions

Similar public policy rationale applies to "pay-if-paid" provisions. In the contract the parties agreed that Bovis would not pay Bullock until the Venetian paid Bovis. However, this provision was invalid for the same reason the lien waiver provision was invalid: it is in the interest of public policy that the laws assist contractors in getting paid for their work.

## The Judgment

Venetian argued that the district court abuse its discretion by awarding damages that Venetian did not stipulate to. However, the district court judge entered an order for the amount awarded pursuant to the stipulations, and no party objected. Therefore the stipulations were valid due to the parties' acquiescence, and the court did not abuse its

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<sup>2</sup> Nev. Rev. Stat. § 49(b) (2008).

discretion.

### **Conclusion**

The Supreme Court found that the district court abused its discretion by making a judgment upon inconsistent responses to special interrogatories from the jury. The court should have resolved the inconsistencies before making the judgment. Lien waivers and “pay-if-paid” provisions are contrary to public policy and were invalid in this contract. The parties’ stipulations with regards to damage amounts are very important to determining awards. If the court orders awards pursuant to stipulations, and the parties do not object, the stipulation is valid by acquiescence.